

SUPREME COURT OF THE UNITED STATES.

No. 214.—OCTOBER TERM, 1925.

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Pasquale Liberato and Anna Capon Liberato, by their Attorney in fact, Giovanni Disanto, Plaintiffs in Error,	}	In Error to the Supreme Court of the State of Pennsylvania.
vs.		
S. A. Royer and Albert Herr, doing business as Royer & Herr, et al.	}	

[April 12, 1926.]

Mr. Justice HOLMES delivered the opinion of the Court.

This is a claim for compensation under the Workmen's Compensation Act of Pennsylvania. It is for the death of the claimants' son in the employment of the defendants, without negligence or fault on the part of the latter, so far as appears. The son died unmarried and without issue, and the claimants, the plaintiffs in error, were wholly dependent upon him for support; but they were Italians living in Italy. The Compensation Board in obedience to a decision of the Court of Common Pleas awarded \$820, and the award was affirmed by that Court. The judgment was reversed by the Superior Court on the ground that the statute expressly provided that 'alien parents . . . not residents of the United States shall not be entitled to any compensation', § 310, and that the Treaty of 1913 with Italy did not cover the case. 81 Pa. Superior Court, 403. The judgment was affirmed by the Supreme Court on the opinion below. 281 Pa. 227. As the plaintiffs contended that the Treaty with Italy invalidated the above clause of the State law and gave them a right to recover, a writ of error was allowed.

Article 3 of the treaty as amended reads: "The citizens of each of the High Contracting Parties shall receive in the States and Territories of the other the most constant security and protection for their persons and property and for their rights, including that form of protection granted by any State or national law which

establishes a civil responsibility for injuries or for death caused by negligence or fault and gives to relatives or heirs of the injured party a right of action, which right shall not be restricted on account of the nationality of said relatives or heirs; and shall enjoy in this respect the same rights and privileges as are or shall be granted to nationals, provided that they submit themselves to the conditions imposed on the latter." 38 Stat. 1669, 1670. This amendment was suggested by the decision in *Maiorano v. Baltimore & Ohio R. R. Co.*, 213 U. S. 208, that under the laws of Pennsylvania a nonresident alien widow could not recover for the death of her husband caused by the defendant's negligence, although citizens of the State were given a remedy. Following this suggestion, the words of the amendment, if taken literally, deal only with death caused by negligence or fault. It is natural that they should be limited in that way. Apart from those States, of which Pennsylvania is not one, that very recently have substituted for the common law a general system of quasi-insurance liability without fault is exceptional and usually has not been imposed for death except as the result of a voluntary arrangement. The statutes of Pennsylvania accord with this view of the Treaty. They give to alien nonresident dependent parents the same right to recover damages for death due to fault that they give to citizens and residents. Then the Compensation Act offers a plan different from the common law and the workman is free not to come in under it. If he does, of course all benefits dependent on the new arrangement are matters of agreement and statutory consequences of agreement and cannot be carried further than the contract and statute go. One of those benefits is compensation irrespective of the cause of death, but it is confined to residents. Whether the workman's election to take advantage of the statute could be made a bar to a suit by his parents alleging a wrong is not before us here, but the right to recover without alleging fault depends on the terms of the Act.

We are of opinion that the Treaty was construed rightly by the Courts below. Were it otherwise, and if the excluding clause of the Compensation Act were held void, the question would arise whether the general grant to parents in the plaintiffs' situation could be extended to cover those whom it excluded in terms or whether, notwithstanding a saving clause, § 502, the whole grant would fail, on the ground that it could not be maintained as made

and could not be assumed to go farther. But treaties are not likely to intermeddle with the consequences of voluntary arrangements, if the right is given, as here it was given by other statutes, to sue for death wrongfully caused, at least unless those arrangements made by third persons take away that right. It looks somewhat as if in the first stages of this case that right was supposed to be taken away; but, if so, the question was not saved, and the only question before us is whether the plaintiffs can recover under the Compensation Act, not whether they could recover for a wrongful death, which was not proved or even alleged.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

